

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 NARVIEZ V. ALEXANDER,)
11 #44839)
12 Plaintiff,) 3:10-cv-00429-RCJ-RAM
13 vs.)
14 STATE OF NEVADA, *et al.*,)
15 Defendants.)
16) /
ORDER

17 On January 14, 2011, the court issued a screening order that allowed certain of plaintiff's
18 claims to proceed and dismissed with prejudice his remaining claims (docket #9). Before the court is
19 plaintiff's motion for relief from this court's order (docket #12).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), cert. denied 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly

discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

6 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
7 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
8 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
9 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
10 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
11 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later
12 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should
13 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
14 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."
15 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), quoting *McDowell v. Calderon*, 197 F.3d 1253,
16 1255 (9th Cir. 1999).

17 In his motion, plaintiff claims that the court has “mistakenly” or “inadvertently”
18 misconstrued the facts set forth in his complaint (docket #12). Plaintiff has failed to make an adequate
19 showing under either Rule 60(b) or 59(e) that this court’s order dismissing certain claims should be
20 reversed.

21 **IT IS THEREFORE ORDERED** that plaintiff's motion for relief from this court's
22 order (docket #12) is **DENIED**.

24 Dated this 30th day of March, 2011.

R. Jones
UNITED STATES DISTRICT JUDGE